

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BRANDON FAVOR,

Petitioner,

Case No. 3:20-cv-00469-MMD-CLB

ORDER

v.

THE PEOPLE OF THE STATE OF
CALIFORNIA, *et al.*,

Respondents.

Petitioner Brandon Favor, a California state inmate, has filed a *pro se* petition for writ of *habeas corpus* (ECF No. 1-1 (“Petition”)). This habeas matter is before the Court for initial review under the Rules Governing Section 2254 Cases.¹ For the reasons discussed below, the Petition is dismissed without prejudice for lack of jurisdiction.

I. BACKGROUND

Petitioner initiated this case in August 2020. He challenges a 2008 conviction and sentence of life without the possibility of parole imposed by the Superior Court of California in Los Angeles County. (ECF No. 1-1 at 78-85.) Petitioner did not pay the \$5.00 habeas filing fee or file an application to proceed *in forma pauperis* (“IFP”). See 28 U.S.C. § 1915(a); LSR 1-1, LSR 1-2.

Docket records of both the United States District Courts and Courts of Appeal show that Petitioner has filed 83 habeas cases and 87 civil rights cases in federal district courts across the country and appealed 24 adverse decisions to the Courts of Appeal for the Second and Ninth Circuits.² Attached to the Petition is an order entered by the United

¹All references to a “Habeas Rule” or the “Habeas Rules” in this order identify the Rules Governing Section 2254 Cases in the United States District Courts.

²In addition to the materials attached to the Petition, the Court takes judicial notice of the online docket records of the United States District Courts and Courts of Appeal, which may be accessed by the public online at www.pacer.gov. Petitioner has filed

1 States District Court for Central District of California indicating Petitioner has been
 2 declared a vexatious litigant. (ECF No. 1-1 at 10 (attaching an order in *Favor v. State of*
 3 *California*, Case No. 2:17-cv-04583-JGB-JEM (C.D. Cal. June 28, 2017)).) Federal district
 4 courts have also dismissed at least three of Petitioner's civil actions as frivolous,
 5 malicious, or failing to state a claim upon which relief may be granted.³ Accordingly, courts
 6 have informed Petitioner that he is ineligible for IFP status under 28 U.S.C. § 1915(g)
 7 unless he is in imminent danger of serious physical injury.⁴

8 **II. DISCUSSION**

9 A state inmate may challenge his or her state conviction or sentence in a federal
 10 petition for writ of *habeas corpus* alleging he or she "is in custody in violation of the
 11 Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). A federal court
 12 cannot grant habeas relief where the petition plainly shows the petitioner is not entitled to
 13 such relief. See 28 U.S.C. § 2243. The court conducts an initial review of each petition
 14 and orders a response unless it "plainly appears" that the petitioner is not entitled to relief.
 15 *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019) (citing Habeas Rule 4 ("If it
 16 plainly appears from the petition and any attached exhibits that the petitioner is not entitled
 17 to relief in the district court, the judge must dismiss the petition")). Thus, a "petition is
 18 expected to state facts that point to a real possibility of constitutional error." Habeas Rule
 19 4 Advisory Committee's Note to 1976 Amendment (citation and internal quotation marks
 20 omitted). Any petition that is patently frivolous, vague, conclusory, palpably incredible,
 21 false, or plagued by procedural defects may be dismissed summarily. See *Boyd v.*

22 actions under the surnames "Favor" and "Favor-El."

23 ³See *Favor-El v. Rome*, Case No. 1:15-cv-01865-LJO-EPG (E.D. Cal. Nov. 22,
 24 2016) (dismissing for failure to state a claim); *Favor v. State of California*, Case No. 2:16-
 25 cv-02870-JGB-JEM (C.D. Cal. May 2, 2016) (dismissing as frivolous, malicious, and for
 26 failure to state a claim); *Favor-El v. United States*, Case No. 2:15-cv-01448-GEB-AC
 (E.D. Cal. Oct. 22, 2015) (dismissing as frivolous).

27 ⁴E.g., *Favor v. Corcoran State Prison*, Case No. 1:19-cv-1325-JLO-BAM (E.D. Cal.
 28 2019) (dismissing case for failure to pay filing fee and stating that Petitioner was ineligible
 for IFP status and his IFP application should be denied); *Favor v. Monae*, Case No. 1:19-
 cv-0081-LJO-SKO (E.D. Cal. 2017) (dismissing case for failure to pay filing fee and
 stating Petitioner was ineligible for IFP status and his IFP application should be denied).

1 *Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998); *Hendricks v. Vasquez*, 908 F.2d 490,
 2 491 (9th Cir. 1990). See also *McFarland v. Scott*, 512 U.S. 849, 856 (1994) (citing Habeas
 3 Rule 4 (“Federal courts are authorized to dismiss summarily any habeas petition that
 4 appears legally insufficient on its face”)).

5 Federal courts are courts of limited jurisdiction. See *Exxon Mobil Corp. v.*
 6 *Allapattah Servs.*, 545 U.S. 546, 552 (2005). The court “is obligated to ensure it has
 7 jurisdiction over an action, and once it determines it lacks jurisdiction, it has no further
 8 power to act.” *Guerra v. Hertz Corp.*, 504 F. Supp. 2d 1014, 1017-18 (D. Nev. 2007) (citing
 9 *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998)). “Federal courts have
 10 authority to grant writs of habeas corpus ‘within their respective jurisdictions.’” *Malone v.*
 11 *Calderon*, 165 F.3d 1234, 1237 (9th Cir. 1999) (quoting 28 U.S.C. § 2241). A district court
 12 must have personal jurisdiction over a petitioner’s custodian to proceed with a habeas
 13 action. See *Braden v. 30th Jud. Cir. Ct.*, 410 U.S. 484, 495 (1973). When a petitioner
 14 names a respondent outside of the district court’s territorial limits, the court lacks personal
 15 jurisdiction over that respondent. See *Malone*, 165 F.3d at 1237.

16 The Petition is subject to multiple defects. First, Petitioner did not pay the \$5.00
 17 habeas filing fee. Judicial records show Petitioner is ineligible for IFP status and the
 18 Petition does not allege or show Petitioner meets the imminent danger exception under
 19 28 U.S.C. § 1915(g). Second, Petitioner has not properly named a California official or
 20 agency as a respondent. The Petition names the “People of the State of California” as
 21 respondent, rather than the warden of the corrections facility where Petitioner is housed
 22 or a state official at the California Department of Corrections. Third, this Court lacks
 23 personal jurisdiction over the “People of the State of California” as well as any state officer
 24 or official from the California Department of Corrections. Fourth, this Court is an improper
 25 venue. In habeas actions, venue is proper in both the judicial district in which the petitioner
 26 was convicted and where he or she is currently in custody. See 28 U.S.C. § 2241(d).
 27 Petitioner was convicted in California and is currently incarcerated there—not in Nevada.

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1 Lastly, summary dismissal is warranted because the Petition (ECF No. 1-1) plainly
 2 shows Petitioner is not entitled to habeas relief. See *Hendricks*, 908 F.2d at 491 (quotes,
 3 brackets, and citations omitted) (“Summary dismissal is appropriate only where the
 4 allegations in the petition are vague or conclusory or palpably incredible, or patently
 5 frivolous or false.”). Here, the Petition consists of 160 pages of confused and unfocused
 6 rambling, and any grounds for relief asserted therein are deficient. Attached to the Petition
 7 are multiple state and federal court orders, filings, and appellate briefs from Petitioner’s
 8 criminal, civil rights, and habeas cases, California docket records, a complaint to the State
 9 Bar of California, and a probation officer’s report.

10 Moreover, Petitioner does not explain how these attachments relate to his current
 11 allegations. Petitioner alleges a single claim for relief, stating: “person forced to expand
 12 legal explanation to foresee indictment as caused amending claims with reasonable legal
 13 background nonauthority set upon Favor to redress direct appeal legal errors by court
 14 record police information to arrest persons causing criminal mischief.” (ECF No. 1-1 at 2.)
 15 Yet this and Petitioner’s other contentions are facially deficient. They lack any reference
 16 to a specific federal constitutional guarantee or cognizable legal basis or are full of legal
 17 conclusions and unnecessary case citations. See *In re Hunter*, 1995 WL 261459, at *2
 18 (N.D. Cal. 1995) (dismissing a habeas petition that was “a dense and impenetrable mass
 19 of verbiage.”). The Petition is vague, unorganized, partly illegible, and largely incoherent.
 20 As such, summary dismissal is appropriate.⁵

21 ⁵The Court has considered and declines to transfer this habeas action to any other
 22 federal district court. See 28 U.S.C. § 1631 (authorizing a district court lacking jurisdiction
 23 to transfer a habeas petition to another district court with jurisdiction “if it is in the interest
 24 of justice”). It does not appear dismissal will materially impact analysis of the limitation
 25 period in a promptly filed new action or otherwise cause substantial prejudice. Petitioner
 26 has filed dozens of federal habeas cases challenging his 2008 California conviction and
 27 appealed numerous adverse decisions to the Second and Ninth Circuits, all to no avail.
 28 Moreover, it is not clear which California federal district court, if any, would have
 jurisdiction over the Petition. Given the number of habeas actions Petitioner has previously
 litigated, the Petition is likely successive under 28 U.S.C. § 2244. Petitioner makes no
 allegation or showing he has Ninth Circuit authorization to file a successive petition, nor
 do docket records reflect he obtained such authorization. See *Brown v. Muniz*, 889 F.3d
 661, 667 (9th Cir. 2018). Accordingly, it is not in the interest of justice to transfer this
 habeas action.

III. CONCLUSION

It is therefore ordered that this action is dismissed without prejudice for lack of jurisdiction.

It is further ordered that Petitioner is denied a certificate of appealability as jurists of reason would not find the dismissal on jurisdictional grounds to be debatable or wrong.

It is further ordered that Petitioner's pending motions (ECF Nos. 3, 4) are denied as moot.

The Clerk of Court is directed to add Nevada Attorney General Aaron D. Ford as counsel for Respondents. No response is required from Respondents other than to respond to any orders of a reviewing court.

Under Rule 4 of the Rules Governing Section 2254 Cases, the Clerk of Court is further directed to file the Petition (ECF No. 1-1) and informally serve the Nevada Attorney General with the Petition and this order by sending a notice of electronic filing to the Nevada Attorney General's office.

The Clerk of Court is further directed to enter judgment accordingly, dismissing this action without prejudice, and close this case.

DATED THIS 30th Day of December 2020.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE